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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

To: Administrative Law Judge
Richard L. Sippel

ENFORCEMENT BUREAU'S OPPOSITION TO MOTION TO ENLARGE ISSUES
(UNAUTHORIZED TRANSFER OF CONTROL AND
MISREPRESENTATION/LACK OF CANDOR)

1. On October 20, 1999, Adams Communications Corporation ("Adams") filed a motion to enlarge issues. By Order, FCC 99M-69, released October 28, 1999, Order, FCC 99M-72, released November 3, 1999, and Order, FCC 99M-76, released November 12, 1999, the date for filing responsive comments was extended to November 19, 1999. The Enforcement Bureau¹ ("Bureau") submits the following opposition.

¹ By Order, FCC 99-172, released October 27, 1999, the Commission created, *inter alia*, the Enforcement Bureau, effective November 8, 1999. One of the functions of the new Bureau is to serve as trial staff with regard to matters designated for hearing. See 0.111(b) of the Commission's Rules. Accordingly, the Enforcement Bureau will replace the Mass Media Bureau as a party to this proceeding.

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2. Background. Adams seeks (again) to add an issue to this proceeding against Reading Broadcasting, Inc. ("RBI").² Essentially, Adams alleges that RBI principal, Micheal Parker ("Parker"), assumed control of RBI in October 1991 prior to seeking, or obtaining, authority from the Commission to do so. According to Adams, Parker's control was demonstrated in minutes of directors' and shareholders' meetings that occurred in October 1991. Adams alleges that the minutes reflect Parker's issuance of stock to persons who had not previously owned any shares of RBI and his subsequent control over an election of directors, which resulted in three new directors (out of five). Adams contends that RBI failed to advise the Commission of the proposed changes in stockholders and directors in its August 1991 application to transfer control from RBI, debtor in possession, to RBI.³ More seriously, Adams charges that RBI misrepresented the situation involving RBI's stock ownership and board of directors composition in an application filed in November 1991 to transfer control from RBI, debtor-in-possession, to RBI.⁴ In this regard, Adams notes that the November 1991 application, as well as an April 1992 ownership report, continues to list Dr. Henry Aurandt, Dr. Edward Fischer, and Mr. Jack Linton as directors even though they had allegedly been replaced in October 1991 by Messrs. Frank McCracken, C. Meyer Rose and Irvin Cohen, all of whom had

² This is Adams' third motion to enlarge.

³ File No. BTCCT-910814KE, granted August 27, 1991. This application was filed on FCC Form 316 and contemplated that RBI would emerge from bankruptcy. The transaction contemplated in the application was never consummated.

⁴ File No. BTCCT-911113KH, granted February 10, 1992. That application was filed on FCC Form 315 and reflected that, in addition to RBI emerging from bankruptcy, a change of greater than 50% of the ownership of RBI's stock would occur. RBI reported that the transfer of control was consummated on March 12, 1992.

been nominated to RBI's board by Parker. Adams suggests that RBI did not accurately report the identity of its directors until 1994 ownership report.

3. Discussion. A motion to enlarge the issues must be based on specific allegations of fact. Folkways Broadcasting Co., 33 FCC 2d 806, 811 (Rev. Bd. 1972). Those allegations must raise a substantial and material question of fact. See Armando Garcia, 3 FCC Rcd 1065 (Rev. Bd. 1988); Section 1.229 of the Commission's Rules. As explained herein, Adams' motion does not raise any such questions. Denial is therefore warranted.

4. There are at least two significant problems with Adams' motion.⁵ First, Adams did not attach the minutes it repeatedly references in its motion.⁶ Without them, it cannot be determined whether there is a discrepancy between what the minutes

⁵ The Bureau is assuming, *arguendo*, that Adams' motion is based on its analysis of the minutes of shareholders' and directors' meetings. The Bureau further is assuming *arguendo*, that Adams did not know and could not have known about those minutes until RBI made them available for viewing. In this regard, the Bureau is aware that it was not until the presiding Administrative Law Judge ruled, by Order, FCC 99M-65, released October 26, 1999, that RBI had to produce copies of certain minutes, which in all likelihood include those referenced in the instant motion to enlarge. Considering all of the foregoing, it appears that Adams' motion was filed within the time period established by Section 1.229(b)(3) of the Commission's Rules. At the same time, however, the Bureau notes that none of the facts pertaining to the minutes is supported by an affidavit from Adams, contrary to Section 1.229(d) of the rules. Unless the minutes -- as opposed to RBI's ownership reports and applications -- are subject to official notice, a matter that Adams has not addressed, Adams has not adequately supported the allegations contained in its motion.

⁶ By letter dated November 5, 1999, Adams transmitted to the Bureau (but did not formally associate with its motion to enlarge) some, but not all, of the minutes referenced in its motion. Review of these documents indicates that, for a period of one to two years, a dispute existed as to composition of RBI's board of directors. That dispute apparently had its origin in litigation involving various RBI shareholders, which began several years before Parker came on the scene. Throughout the dispute, Parker was a director of RBI and its president. The minutes Adams transmitted further indicate that RBI had a "unified" board as of some date in 1993.

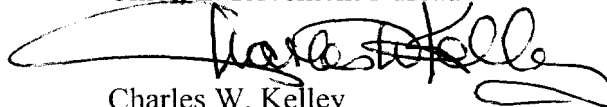
reflect and what RBI reported in its applications and ownership reports. Second, with respect to the alleged misrepresentation/lack of candor, Adams has posited no motive (and none is readily apparent) for the alleged reporting failures. Absent a credible motive for concealing the identity of the locus of control, there is no indication that RBI had an intent to deceive the Commission with its allegedly inaccurate filings. Further, without a substantial question of misrepresentation or lack of candor related to the unauthorized change in control, case law indicates that the Commission will not take away a license even if an unauthorized transfer of control occurred. *E.g., Ms. Sally Hoskins, President*, 13 FCC Rcd 25317 (MMB 1998). Instead, the only issue that might be warranted would focus on whether a forfeiture should be imposed for an unauthorized transfer of control.

5. To raise a substantial question of deceit, the moving party must not only show that the questionable representation was inaccurate or materially incomplete; it must also show an intent to deceive. *See Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Of course, under various scenarios, intent can be inferred. *E.g., Trinity Broadcasting of Florida, Inc.*, FCC 98-313, released April 15, 1999, at ¶ 100, *appeal pending*. However, in the instant matter, RBI's intent to deceive is not readily apparent and Adams has alleged nothing that suggests that RBI or Parker had any reason to conceal a change in control. In this regard, Parker, as RBI's president, executed all of the referenced materials, and he always reported, apparently accurately, that he was one of RBI's directors. Thus, all the materials cited by Adams reflect that Parker always had during the period in question a position of significant influence at RBI. Moreover, the second application cited by Adams was predicated on a proposed change in RBI's control due to


a significant change in the interests held by RBI's shareholders. In other words, even if RBI did not accurately report who its directors were and would be, it did seek Commission authority to effect a change in its ownership, which would result in its former shareholders holding less than 50% of the shares they had formerly held. Moreover, RBI, apparently accurately, reported in that application the percentage interest in RBI that Parker, through his solely held company, Partel, Inc., would hold subsequent to the change in the composition of RBI's shareholders. Indeed, subsequent to that application's grant, Partel would be RBI's largest single shareholder, holding nearly 30% of RBI's voting stock. In light of the foregoing, it is not apparent that RBI misrepresented facts or lacked candor about its control, and it is nothing short of mysterious as to why RBI would intentionally attempt to deceive the Commission or anyone else about the subject of its control.

6. Accordingly, the Bureau opposes Adams' motion to enlarge.

Respectfully submitted,
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November 19, 1999

CERTIFICATE OF SERVICE

Karen Richardson, secretary of the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 19th day of November, 1999, sent by first class United States mail (or by hand) copies of the foregoing "Enforcement Bureau's Opposition to Motion to Enlarge (Unauthorized Transfer of Control, and Misrepresentation/Lack of Candor)" to:

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